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APR 5 1985

No. 84-1258

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

CHEMICAL BANK and
WASHINGTON PUBLIC POWER SUPPLY SYSTEM,

Petitioners,

v.

PUBLIC UTILITY DISTRICT NO. 1 OF BENTON COUNTY, WASHINGTON, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* AND BRIEF *AMICUS CURIAE* OF THE NATIONAL WPPSS 4 AND 5 BONDHOLDERS COMMITTEE IN SUPPORT OF THE PETITION

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MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE*

The National WPPSS 4 and 5 Bondholders' Committee respectfully moves pursuant to Rules 36.1 and 42 of the Rules of this Court for leave to file a brief annexed hereto as *amicus curiae* in support of the petition for a writ of certiorari.

The National WPPSS 4 and 5 Bondholders' Committee (the "Committee") consists of approximately 25,000 persons throughout the country who purchased bonds representing more than half of the $2.25 billion that the Washington Public Power Supply System borrowed, at the behest and on behalf of respondents herein, to finance nuclear power Projects 4 and 5. The Committee was formed in response to the default on the bonds, an event respondents precipitated by repudiating their contractual obligation to guarantee repayment. The Committee's Executive Board which is composed of representatives from

various regions of the country, seeks to protect and coordinate the interests of former and current bondholders throughout the nation whose funds have been appropriated for respondents' local public use. In the course of these efforts the Committee has pursued as its principal goal an expeditious, equitable and comprehensive resolution of the dispute underlying this case.

In support of its motion the Committee states:

1. While the petitioners have consented to the filing of the attached brief amicus curiae, the Committee has been unable to obtain the consent of all of the respondents.

2. The decision of the Supreme Court of the State of Washington upholding respondents' renunciation of their obligations has operated with drastic effect upon the bondholders. It has denied them not only the benefit of their contractual bargain, but also the return of any portion of the underlying principal they lent in good faith for respondents' public use.

3. As more fully set forth in the attached brief, respondents' conduct and the Washington Supreme Court's startling decisions forced commencement of additional litigation in federal and state court. In a brief filed in opposition to the petition, certain principal respondents have suggested that the pendency of these additional actions is a basis for denial of the writ.[1] Although this Committee supports much of the litigation referred to by the respondents, the Committee has no doubt, and wishes to inform this Court, that the present case is both central and critical to this controversy and the most expeditious vehicle for affording relief to all persons injured by respondents' conduct.

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[1] Brief of Washington Public Utilities Group in Opposition to Petition for Certiorari ("WPUG Brief") at 2-4. The WPUG Brief was filed prior to the date on which briefs in opposition to the petition were due.

4. For those reasons, the Committee has a vital interest in a review by this Court of the questions presented by the petition.

5. Accordingly, the Committee seeks the opportunity to make its views known to the Court and to assist the Court in its decision on the Petition for a Writ of Certiorari.

Counsel for the Committee hereby request that the Court grant this Motion to File Brief Amicus Curiae.

Respectfully Submitted this 4th day of April, 1985.

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TABLE OF CONTENTS

	Page
Motion for Leave to File Brief Amicus Curiae	i
Brief Amicus Curiae	1
Interest of *Amicus Curiae*	1
Argument	3
Conclusion	6

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BRIEF *AMICUS CURIAE* OF THE NATIONAL WPPSS 4 AND 5 BONDHOLDERS COMMITTEE IN SUPPORT OF THE PETITION

INTEREST OF AMICUS CURIAE

The National WPPSS 4 and 5 Bondholders' Committee (the "Committee") consists of approximately 25,000 persons throughout the country who purchased bonds representing more than half of the $2.25 billion that the Washington Public Power Supply System borrowed, at the behest and on behalf of respondents herein, to finance nuclear power Projects 4 and 5. The Committee was formed in response to the default, an event respondents precipitated by repudiating their contractual obligation to guarantee repayment of the bonds. In the wake of that repudiation, the Committee's Executive Board comprised of

representatives from various regions of the country, has sought to protect and coordinate the interests of the former and current bondholders throughout the nation whose funds have been appropriated for respondents' local public use.

As a direct result of respondents' conduct and of the Washington Supreme Court's startling decisions invalidating the security behind the bonds, bondholders and their representatives have been required to commence additional litigation in federal and state court.[1] In a brief filed in opposition to the petition in this case, a principal group of Washington respondents has suggested that the pendency of those actions is a basis for denying certiorari here.[2] In addition, a conditional petition has been filed suggesting some deserving claimants are not represented in this action.[3] In response to these contentions, and in an effort

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[1] The federal lawsuit consolidates several actions alleging securities fraud, among other claims, against a wide variety of defendants. *In Re Washington Public Power Supply System Securities Litigation*, MDL No. 551 (W.D. Wash. 1983). One state court action raises claims against the State of Washington based on its participation in the events leading to forfeiture of the bondholders' funds. *Hoffer, et al. v. State of Washington, et al.*, No. 84-2-16459-0 (Super. Ct. King County, 1984). A separate state court action, brought against a wide range of parties (including many defendants in the federal securities case), alleges violations of the Washington state securities laws, negligent misrepresentation and other claims. *Haberman, et. al. v. Washington Public Power Supply System, et al.*, No. 84-2-06452-8 (Super. Ct. King County, Wash. 1984).

Certain actions eventually consolidated in the federal lawsuit were filed while the issue regarding validity of the bonds' security, as vigorously contested by respondents herein, was still pending in the Washington State Supreme Court. But many of the principal claims were raised in response to the Washington Supreme Court's startling resolution that issue, foreshadowing its subsequent denial of all relief.

[2] Brief of Washington Public Utilities Group in Opposition to Petition for Certiorari ("WPUG Brief") at 2-4. The participants comprising the Washington Public Utilities Group hold shares representing approximately 45% of the entire interest in Washington Public Power Supply System Nuclear Power Projects 4 and 5.

[3] Petition for Writ of Certiorari to the Supreme Court of the State of Washington at 24-25 & n.5, *Haberman, et al. v. Chemical Bank and Washington Public Power Supply System, et al.*, No. 84-1414 (U.S. March 6, 1985).

to seek redress of the harm to all persons injured by the conduct of respondents herein, the Committee wishes to emphasize the central and critical importance of the case now presented for review.

ARGUMENT

Respondents' description of additional pending litigation neither detracts from the significance of this central case nor provides any basis for denial of the writ. Instead, that description only serves to highlight the unusual burdens that the federal and state judicial systems will bear as a result of one state's abrogation of the bedrock rules of public commerce and the conconmitant constitutional guarantees of our federal system. The extensive litigation that respondents mention is itself one of the consequences that review of this case would diminish or eliminate.

Moreover, although respondents seek to avoid review by noting other "avenues of relief" that have not yet been "exhausted", they themselves in other fora vigorously contest the availability of any such relief. Indeed, respondents have denied all liability in the federal litigation by contending that the bondholders' injuries were caused solely by the decisions of the Washington Supreme Court. Having portrayed those decisions as the sole cause of injury, respondents should not now be heard to suggest that this Court's review of those decisions is unnecessary.

This Committee is the coordinating supporter of the action that has been brought against the State of Washington and it is a supporter of the federal securities litigation. Yet the committee has no doubt that the present case is central in this controversy and that it presents the most expeditious means of providing comprehensive relief for the injuries respondents have perpetrated.

The Committee wishes to emphasize that such an expeditious and comprehensive resolution is urgently required. Many purchasers relied critically on those bonds to generate fixed income

for retirement purposes; many advanced substantial portions of their life savings on the strength of respondents' unambiguous assurances. Yet respondents have been permitted to simply seize the funds they promised to return, leaving innocent individuals throughout the nation grievously harmed as a result of this appropriation of their savings.[4]

To date, these individuals have been denied the prompt recovery needed to redress the disastrous impact of respondents' conduct on their lives. Unless review is granted by this Court, innocent bondholders will be exposed to protracted actions involving heightened legal burdens. Those burdens add layers of complication to the central issues underlying this dispute, and attenuate prospects for timely relief.

By contrast, the present case directly, clearly and immediately presents the core issues raised by these respondents' conduct. This central case was filed in May, 1982—well before commencement of the federal or other actions that respondents mention—to enforce the primary obligations the abrogation of which caused the bondholders' injuries. Defendants, respondents herein, are the entities most directly responsible for those injuries, they are also the entities who benefitted most directly from the bondholders' loss. This case involves principles of federal constitutional law that were specifically designed to govern the underlying dispute between local public agencies and largely out-of-state lenders who have been divested of their funds. For those reasons this action represents the most expeditious vehicle for affording relief.

Given the centrality of this case, review by this Court would dramatically increase the prospects for a prompt, integrated resolution encompassing the claims of all injured parties. Action by this Court would most probably eliminate the need for

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[4] As more fully set forth in the brief *amicus curiae* filed by the American Association of Retired Persons, many bondholders, due to their advanced age, cannot reenter the work force and thus cannot even begin to rebuild the savings they have lost.

most of the extensive litigation to which this Committee and others have been required to commence and would provide the impetus for disposition of the entire controversy.

The mass of litigation made necessary by respondents conduct and the Washington Supreme Court's surprising decisions thus provides a reason for granting the petition and, in any event, should not be used to justify insulating those decision from review by this Court. That is particularly true in view of the complex and burdensome nature of the additional litigation whose pendency respondents stress. As respondents themselves are required to note, the federal action "was brought against scores of defendants", has resulted in "production of literally tens of millions of pages of documents," and "multi-track depositions are presently in progress". WPUG Brief at 3. The parties and counsel in the federal proceeding alone are so numerous that an entire public school building has been considered for use at the trial site—with its large auditorium serving as the courtroom. The outcome of all of that enormous effort and expenditure of resources remains distant and far from certain.

Those injured by respondents' conduct should not be required to bear such burdens and uncertainties merely to recover funds that were lent in good faith and that respondents are financially able to repay. Those burdens and uncertainties could be substantially lessened, or even eliminated, by review in this Court of the judgment of the Washington Supreme Court.

CONCLUSION

For the foregoing reasons, the petition for certiorari should be granted.

Respectfully Submitted this 4th day of April, 1985.

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